



The Children's Law Center serves as a training, project, and resource center in child protection and juvenile justice for attorneys, judges, case workers, law enforcement, child advocates, guardians ad litem, and other child serving professionals.

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School of Law  
University of South Carolina

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# Law Enforcement Officer Guide Emergency Protective Custody

The Children's Law Center, University of South Carolina School of Law, designed this information packet for all law enforcement officers called upon to place a child in emergency protective custody. This packet focuses on the emergency protective custody process and procedures only, and does not address other duties officers may have in child abuse cases such as arrests or crime scene processing. This packet was prepared by the Children's Law Center in collaboration with the Children's Justice Act Task Force and the S.C. Criminal Justice Academy.

For more information, call (803) 777-1646 or go to the Children's Law Center web site, <http://childlaw.sc.edu>.

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## Emergency Protective Custody (EPC) Overview

South Carolina law authorizes law enforcement officers to place children in emergency protective custody (EPC) in three situations:

- there is probable cause to believe that the child is in substantial and imminent danger of abuse or neglect; or
- child is accidentally lost and parents cannot be located; or
- parents have been arrested and do not give written consent for child to be placed with another person.

The officer has authority to place a child in EPC in all counties and municipalities. If an officer places a child in EPC in a county or municipality where the officer is not assigned, the officer should notify the local law enforcement office responsible for investigation.

As to probable cause, the law states that the risk to the child must be "substantial" and "imminent". These words are not defined specifically. Furthermore, EPC is appropriate only when there is not enough time to request a court order to remove the child from the home. You are authorized by law to remove a child if you believe that the child might be harmed before a court order can be obtained.

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In deciding whether EPC is appropriate in abuse and neglect cases, you may talk with the child and consult with others, such as supervisors, other officers, or DSS caseworkers. You may consider the type of abuse that is reported, whether there is a history of violence in the home, and the severity of injury that may occur. Ultimately, however, you must use professional judgement in making this decision. Most experienced officers agree that it is better to err on the side of protecting a child than to expose a child to risk.

Should you take a child in EPC, you are immune from any criminal or civil liability as long as you are acting in good faith and are not grossly negligent.

### **Impact on the Child**

All situations are different so you must be prepared for anything. In many cases, children do not want to leave their parents even though the children have been abused by their parents.

Small children may feel better if they can take a favorite object or toy with them. Such a toy may include a stuffed animal. However, it is usually best not to prolong the situation. As soon as possible, explain to the child that you have taken this action to protect them. Assure the child that this is temporary, that a complete investigation will occur, and that DSS will arrange for visits with parents. Unfortunately, some children have been taught to fear law enforcement officers. Allowing the child to be transported by DSS may be appropriate when practicable.

At this point, it is better to avoid accusing the parents of harming the child. You should explain that you are required by law to protect children whenever their safety is threatened and that the children will be protected until a full investigation can be conducted.

### **Reporting Requirement**

If you suspect that a child has been, or may be, harmed by abuse or neglect, you are required to report to DSS the information upon which you base your suspicion.

### **Ages of Children Protected by Law**

Child protection laws apply to all persons under the age of 18. (Parents of a 17-year-old with a history of incorrigibility cannot be criminally charged for abandoning the child, but EPC may still be considered.)

### **Taking Siblings into EPC**

If one child is taken in EPC based on an incident of excessive corporal punishment that consists of external lesions and minor bruises, other children in the home shall not be taken in EPC based on the injuries to the one child. You may place other children in the home in EPC if a threat of harm is indicated to the other children. Such threat of harm may be indicated by a prior history of domestic violence or other abuse in the home, known alcohol or drug abuse, or alcohol or drug abuse evident at the time of the initial contact.

### **Law Enforcement Approval of DSS Placement Decision**

Your office and DSS may have a procedure in place to address situations when DSS determines after preliminary investigation that the child should be returned to the parent, guardian, or custodian. You should be aware of that procedure. You may object to the return of the child, and DSS must then assume legal custody of the child until a probable cause hearing is held. An example of a basis for objection: you find a criminal record on the relative proposed for placement and that record would make him/her a danger to the child. (You can't reveal information from state or national records, but you can use that information in making your decision to object.)

The law allows parents who have been arrested to consent in writing to another person taking physical custody of the child. If you have reason to believe that the child would be at risk with the person designated by the parent, you can discuss alternatives with the parents or proceed with emergency protective custody.

### **Scheduling of Probable Cause Hearing**

A probable cause hearing shall be scheduled by the family court to determine: probable cause for EPC and for DSS to take legal custody; and probable cause for DSS to retain legal custody at the time of the probable cause hearing. If you are not notified about the date and time of the probable cause hearing, you can contact the DSS caseworker, the DSS attorney, or the family court for the county in which the hearing is scheduled.

## **Emergency Protective Custody Checklist for Law Enforcement Officers**

- ☐ Refer to protocol between law enforcement agency and DSS, if available in your county.
- ☐ Determine whether to place child in EPC based on finding probable cause on one of the following:
  1. Abuse or neglect, and:
    - Child is in substantial danger; and

- Child is in imminent danger; and
  - There is no time to apply for a court order.
2. Parents arrested and have not given written consent for another person to take physical custody;
  3. Child is lost and parents cannot be located.
- ❑ Notify DSS.
  - ❑ Get emergency medical care for child if needed.
  - ❑ Take photographs of visible injuries if appropriate.
  - ❑ Complete incident report as required by department's procedures.
  - ❑ Determine whether to agree with DSS if DSS wishes to return child home or to place the child with a relative.
  - ❑ Prepare for testimony at probable cause hearing.

## **Probable Cause Hearing**

### **Time of hearing:**

- Hearing must be held within 72 hours after child was taken into emergency protective custody.
- If the third day falls upon a weekend or holiday, the hearing must be held no later than the next working day.
- If court is not being held in the county, the hearing must be held in another county in the circuit.
- If there is no family court in the circuit, the hearing may be held in another court in an adjoining circuit.

### **Purpose of hearing:**

- Determine whether there was probable cause for emergency protective custody and for DSS to assume legal custody.
- Determine whether probable cause for retaining legal custody continues to exist at the time of the hearing.
- Determine whether reasonable efforts were made by DSS to prevent removal.
- Appoint attorney and guardian ad litem for child. Appoint lawyers for parents who are indigent.
- The court may order expedited placement of a child with a relative.
- Set date and time of merits hearing.

**Conduct of hearing:**

- This hearing is similar to a preliminary hearing in the criminal process.
- It is held before a family court judge.
- DSS can present witnesses (including law enforcement officer).
- Parents may cross-examine these witnesses.
- Parents may submit affidavits.

**Testifying at hearing:**

- You may be called upon to explain your reasoning at the time of removal. Do not feel that you need to exaggerate or justify your actions. Judges will consider what information was available to you at the time you took the action. If part of your reason for removing the child included unsafe living conditions, you should document the unsafe conditions by way of photograph, video tape, or written description.

**EMERGENCY PROTECTIVE CUSTODY TIME LIMITS**  
**South Carolina Codes § 63-7-620, 63-7-640 & 63-7-710**

**OFFICER** takes child in EPC

If child needs emergency medical care:

**IMMEDIATELY**

**OFFICER** transports child to health care facility

**OFFICER** reports to DSS

**OFFICER** informs DSS if child should not be returned home or should not be placed with relative before probable cause hearing

**WITHIN 2 HOURS**

**WITHIN 24 HOURS**

If child does not need emergency medical care:

**IMMEDIATELY**

**OFFICER** reports to DSS

**OFFICER** informs DSS if child should not be returned home or should not be placed with relative before probable cause hearing

**DSS** assumes physical control of child

**DSS** conducts preliminary investigation

**DSS** and/or **OFFICER** may request extension of EPC for another 24 hours for records check

If **DSS** determines probable cause, **DSS** may assume legal custody of child

If **DSS** determines child should be returned:

**DSS** consults with  
**OFFICER**

If **OFFICER** objects to  
return of child:

**DSS** must assume legal  
custody until probable cause  
hearing

If **DSS** assumes legal custody, **DSS** must  
begin child protective investigation

**ON OR BEFORE NEXT  
WORKING DAY AFTER  
INITIATING CHILD  
PROTECTIVE  
INVESTIGATION**

**DSS** Must initiate removal proceeding

**WITHIN 72 HOURS**

**Probable cause hearing** must be held:

When requested by **OFFICER**

When requested by **DSS**

When requested by parent or  
guardian

## **REFERENCES:**

### **Selected Statutory Definitions Pertaining to Emergency Protective Custody**

**Abandonment 63-7-20(1)**

**Child 63-7-20(3)**

**Child Abuse or Neglect 63-7-20(4)**

**Emergency Protective Custody 63-7-20(9)**

**Legal custody 63-7-20(13)**

**Mental injury 63-7-20(14)**

**Person responsible for a child's welfare 63-7-20(16)**

**Physical injury 63-7-20(18)**

**Physical custody 63-7-20(17)**

**Probable cause 63-7-20(20)**

### **Selected Statutory Provisions Pertaining to Emergency Protective Custody**

**Authority for Law Enforcement Officer to Take Emergency Protective Custody 63-7-610(A)**

**Extensions of EPC for Another 24 Hours 63-7-680**

**County Where Law Enforcement May Take EPC 63-7-610(A)**

**Medical Care 63-7-620**

**Detainment of Child by Medical Professionals 63-7-750**

**Notification by Law Enforcement to DSS 63-7-630**

**Ex Parte Emergency Protective Custody 63-7-740**

**Mandatory Reporting Requirement 63-7-310**

**Excessive Corporal Punishment 63-7-20(4)(a)**

**DSS Preliminary Investigation / Efforts to Prevent Placement 63-7-640**

**Legal Custody 63-7-660**

**Child Protective Investigation 63-7-700(B)**

**Notification by DSS 63-7-660**

**Placement 63-7-650**

**Relative Placement 63-7-690**

**Return to Parents or Guardians 63-7-670**

**Law Enforcement Objection to Return or Placement 63-7-670**

**Probable Cause Hearing 63-7-710**

**Protocols 63-7-760**

**Photographs of Children 63-7-380**

**Domestic Violence 63-7-370**

**Immunity 63-7-750(B)**



**SAMPLE**

**CONSENT FOR PHYSICAL CUSTODY OF CHILD(REN)**

I, \_\_\_\_\_, am the parent or legal guardian of the  
following child/children, \_\_\_\_\_. I  
consent to leaving my child/children in the care of the following person(s):

name(s): \_\_\_\_\_  
address: \_\_\_\_\_  
phone number: \_\_\_\_\_

The decision to leave my child/children with the person(s) named above is solely my  
decision. I made that decision voluntarily and independent of the \_\_\_\_\_  
County Sheriff's Department.

Signature \_\_\_\_\_  
Date \_\_\_\_\_

Signature of  
witness \_\_\_\_\_

I, \_\_\_\_\_, accept responsibility for the  
child/children named above. I will provide adequate food, shelter, supervision, care and  
protection for the child/children in the absence of the parent or legal guardian.

Signature \_\_\_\_\_  
Date \_\_\_\_\_

Signature of witness \_\_\_\_\_

